

traveling extensively throughout the month of April and had a very complicated schedule.

Plaintiffs rejected the April 28th date due to "various scheduling obligations."

Apparently, neither Ms. Ben-Ami, Ms. Carson, nor Mr. Drozdoff, could be bothered with rearranging their schedules to accommodate this date. Yet, they now expect that Dr. Gaynor should have to try to rearrange his schedule to accommodate them.

At the time that Lilly offered the April date, Lilly believed that Dr. Gaynor may have date of availability some time in May. By the time that Plaintiffs rejected that deposition date, however, Lilly found that Dr. Gaynor was not available until June 8th. Counsel for Lilly has repeatedly tried to find an earlier date for Dr. Gaynor's deposition. (Exhibits A – E of Plaintiffs' Motion) Unfortunately, Dr. Gaynor is out of town for the entire beginning of May for conferences. The remainder of the month of May, Dr. Gaynor is involved in at least two business transactions involving travel and meetings with third parties. Neither Dr. Gaynor nor Lilly have control over the timing of the conferences or the meetings required for these business transactions.

Lilly understands Plaintiffs' concern that this June 8, 2005 date may be considered two days after the close of discovery, pursuant to the notes from this Court entered on April 8, 2005 which stated that "discovery is to be continued 2 months." There is some confusion by the parties as to whether the note set the discovery cut off for two months from the April 6, 2005 status conference or two months from the entry of April 8, 2005. However, even assuming that the Court intended that fact discovery be completed by June 6, 2005, Lilly agreed, in light of the scheduling difficulties brought on by Plaintiffs' counsels' unavailability and Dr. Gaynor's work obligations, not to object to Dr. Gaynor's deposition taking place taking place on June 8, and even agreed to sign a Joint Motion to

that effect if necessary. (Exhibit E of Plaintiffs' Motion) Plaintiffs are simply unwilling to compromise on any front. They are unwilling to accommodate their schedules for that of the witness and they are unwilling to work with Lilly to resolve this discovery issue without this Court intervention. In fact, counsel for Plaintiffs did not even provide Lilly the courtesy of notifying Lilly that they were rejecting Lilly's offer to sign a Joint Motion. Plaintiffs simply filed this Motion to Compel instead.

Lilly respectfully asks this Court not to condone Plaintiffs' actions by forcing Dr. Gaynor to appear for a deposition in May. Thereby, Lilly requests deny Plaintiffs Motion to Compel and allow Dr. Gaynor to appear for his deposition on June 8, 2005.

Date: May 13, 2005



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CERTIFICATE OF SERVICE


I, Jenny E.S. Macioge, hereby certify that on May 13, 2005, a true and correct copy of the foregoing was served by the indicated means to the persons at the addresses listed:

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